No. 312,
Brief of Butts for D. C.
Filed Nov. 27, 1897.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 312.

WILLIAM R. HALL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

ARTHUR C. BUTTS,
Solicitor for Plaintiff in Error.

Supreme Court of the United States.

WILLIAM R. HALL,
Plaintiff in Error,

vs.

THE UNITED STATES.

Brief for Plaintiff in Error.

FACTS.

The plaintiff in error was indicted by the Grand Jury in the United States Circuit Court for the Southern District of New York, by an indictment filed in said Court October 13th, 1896. See Printed Record (folios 8-13), pages 4-6. The trial of the plaintiff in error was held before Mr. Justice Brown and a Jury October 21st, 1896.

At the close of all the evidence submitted by the Government the Counsel for the plaintiff in error requested the Court to direct the Jury to acquit the prisoner upon the five grounds found in the printed record at (folios 40-42), page 20, which request was denied, to which refusals and each of them Counsel for the prisoner duly excepted. (See folio 41), page 20. The plaintiff in error was found guilty of the charge laid in the indictment (folio 45), page 22, and on November 24th, 1896, was sentenced to two years inprisonment at hard labor at Kings County Penitentiary (folio 13), page 6.

On the 29th day of December, 1896, a Writ of Error was

allowed bringing the record hereof into this Court upon the following assignment of Errors relied upon here:

Second. The Court erred in denying the motion of defendant's counsel to direct the Jury to acquit the defendant as contained in the settled bill of exceptions.

Third. The Court erred in denying the motion of defendant's counsel to direct the Jury to acquit the defendant upon the first, second, third, fourth and fifth grounds of said motion as contained in the bill of exceptions as settled, (folio 49), page 24.

POINTS.

I.

The indictment is found under Section 5,467 of the Rev. Stat. of the U. S., and contains *three counts.*

Each of the Counts contains the charge, that the plaintiff in error was "employed in a department of the postal service of the United States, to wit, as a Clerk at Station "F," a branch Post Office of the United States in the said City of New York.

The first and second Counts charge, that as such Clerk, Hall did unlawfully, &c., secrete, embezzle and destroy a certain letter directed and addressed to Mrs. Susan Metcalf, No. 346 East 24th St., New York City, N. Y., which had been entrusted to said Hall by virtue of his office and employment, and which said letter, "WAS INTENDED TO BE DELIVERED BY A LETTER CARRIER."

The third count contains the same allegation as the first and second Counts as to Hall's employment in the P. O. department, and that the letter was intended to be delivered by letter carrier," but charges that the *contents* of said letter, to wit, three one dollar silver certificates were feloniously stolen, &c.

Under the indictment and to sustain a general verdict of "guilty" upon the three counts, the Government was bound to prove these allegations.

First. That Hall was in the employ of the Government of the United States in the postal service.

Second. That while in such employ, he was entrusted with the letter described in the indictment.

Third. That such letter was intended to be delivered by a letter carrier.

Fourth. That as such postal clerk having a letter in his possession intended to be delivered by a letter carrier, he secreted, embezzled, destroyed or stole the contents thereof.

The only evidence offered by the Government to sustain the allegation in each of the three counts of the indictment, that the said letter was intended to be delivered by a letter carrier, is that of Joseph E. Jacobs (folios 27-28), page 13, and Edmond M. Dillon (folio 31), page 15.

It is respectfully submitted that when the Government closed its case, no evidence was before the Court upon which the plaintiff in error could be lawfully convicted, and that the Court erred in not granting Counsel's motion directing the jury to acquit the prisoner. (See folios 40-41-42) page 20, as set forth in the second and third assignment of errors herein (folios 49), page 24.

II.

Under Section 5467 of the Rev. Stat. of the U. S., the Court will note that the language defining the crime thereunder is as follows:

"Any person employed in any department of the postal service who shall secrete, &c, * * any letter * * which was intended *to be conveyed by* mail or carried or delivered by any mail carrier, mail messenger, route agent, *letter carrier*," &c.

It is quite evident that under this section, according to the facts to be proved showing guilt, that the indictment may charge that a letter:—

1st. Was to be conveyed by mail.

2nd. Was to be delivered by a letter carrier.

But if the indictment charges either the former or the latter *the charge in the indictment must be proved as laid.*

Matthews vs. U. S.; 35 Fed. Rep., 890.
United States vs. Denike, 35 Fed. Rep., 407.
United States vs. Wright, 38 Fed. Rep., 106.

The Matthews case above was followed in U. S. vs. Dorsey, 40 Fed. Rep., 750.

These decisions paved the way for the decision of this Court in the case of U. S. vs. Good, 159 U. S. Rep., 661, which it would seem is *absolutely conclusive* that the Court erred in denying the motion to direct the jury to acquit the prisoner upon the trial.

III.

The learned trial Court erred in not granting the motion of the counsel for the plaintiff in error directing the jury to acquit the prisoner, and the grounds of such error fully appear in the opinion of the Court denying the motion in arrest of judgment and for a new trial, (folios 14–19). pages 7–9.

It will be seen that the learned Court sustained the contention of counsel as to the first and second counts of the indictment saying:

"This indictment however is not framed under the "conveying" clause of Section 5467, but upon the averment that the letter was "intended to be delivered by a letter carrier." As the government choose this as one of the several necessary averments in the first two counts drawn upon the first part of Section 5467, I think it is bound by the particular clause on which those indictments are drawn and that the verdict cannot stand upon these counts."

This would seem to settle the matter.

But the learned Court then takes the extraordinary position that while the conviction could not stand under the two counts

above referred to it could stand under the third count for the reason as stated:

"2. The last clause of Section 5467 upon which the third count is framed *does not require either of the above averments*" *i. e.*, that *either that the stolen letter was intended to be conveyed by mail or delivered by a letter carrier*," &c.

And the Court therefore threw out the allegation of the third count that said letter was intended to be delivered by a letter carrier as *surplusage* and held the plaintiff in error could be convicted under said third count.

This reasoning guided the learned Court in denying counsel's motion to direct a verdict of acquittal and such denial was error, but it is inconceivable how the Court was misled into the same.

1st. The Court holds necessarily that the last clause of Section 5467 has no relation to the former part of said section.

2nd. That an indictment could be framed under said clause independent of the other provisions of the said section.

3rd. That under said last clause the words "*any such person*" &c. can be convicted of stealing the contents of a letter which came into his possession as such P. O. employee, even if the letter was never intended to be conveyed by mail or delivered by a letter carrier.

It is respectfully urged that this is error.

The whole section must be construed together and it will then be seen what the elements of the offences are therein.

It will be found that the person must be (1) a post office employee and (2) must have had entrusted to him a letter, &c., intended to be conveyed by mail or delivered by a letter carrier (in this case) and (3) such letter must contain something of value, &c. If such person so appointed and having a duty to perform secretes, &c., such letter he is guilty of a crime under such section.

And when the last clause of such section provides that "*any such person*" steals the contents of any letter &c., can there be a reasonable doubt that "such person" is that person referred to in the first part of Section 5467, to wit:

1st. A Post Office employee.

2nd. A Post Office employee to whom was intrusted a letter intended to be conveyed by mail or delivered by a letter carrier.

3rd. Who secretes, embezzles, destroys a letter containing something of value *or steals* the contents thereof?

The language of Section 5468 is conclusive that the crime charged in Section 5467 is that a Post Office employee tampers with or steals a letter of value on its way through the mails. *Because* it says that, that the deposit &c., "shall be evidence that the same was intended to be conveyed by mail &tc. Does not that language apply to the last clause of Section 5467? Would an indictment under that last clause be complete unless it charged either that the letter stolen was to be conveyed by mail or delivered by a letter carrier.

But in the Matthews case (above) Judge Harlan distinctly says the presumption can be overcome, and in that case as in the case at bar was overcome by direct evidence, that it was not the intention that the letter should be delivered through the mail."

The case U. S. vs. Good cited above would seem to be conclusive upon this point.

IV.

The case of U. S. vs. Montgomery, 162 U. S. Rep., 410 is not in point here.

In that case the main question before the Court was as to a variance between the allegation and proofs *that the letter was a decoy letter.*

THERE IS NO QUESTION MADE IN THIS CASE UPON THAT GROUND.

But it is earnestly contended that if a letter *decoy or otherwise* under Section 5467 as alleged in the indictment was intended to be delivered by a letter carrier *that the charge must be proved as laid and if not* there is a fatal variance entitling the

prisoner to a verdict of acquittal. And as there was no disputed question of fact for the jury the matter was one of law for the Court and his refusal to direct a verdict upon the evidence was error.

The judgment of conviction should be reversed and a new trial granted.

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